

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14818, of Joseph S. Hoover, Jr. and Miriam E. Hoover, pursuant to 11 DCMR 3107.2, for a variance from the minimum width of lot requirements (Sub-section 401.3) to construct a detached single-family dwelling in an R-1-B District at premises 1712 Upshur Street, N.W., (Square 2637, Lot 49).

HEARING DATES: June 22 and September 14, 1988
DECISION DATE: November 2, 1988

FINDINGS OF FACT:

1. The application was originally scheduled for the public hearing of June 22, 1988. At the request of the applicant, the Board continued the case to its public hearing of September 14, 1988 in order to afford the applicant an opportunity to offer the subject lot for sale to the adjacent property owners. The adjacent property owners declined to purchase the lot and the public hearing took place as scheduled on September 14, 1988.

2. The property is located on the south side of Upshur Street between 17th and 18th Streets and is known as premises 1712 Upshur Street, N.W. It is zoned R-1-B.

3. The lot is irregularly shaped with a frontage of 18.16 feet along Upshur Street and a width of 49.05 feet at the rear. The depth of the lot is 156 feet on the west and 159.03 feet on the east. The lot contains approximately 5,242 square feet of land area.

4. The lot is currently unimproved and has a slightly rising topography from east to west.

5. The surrounding area is generally improved with single family dwellings constructed circa 1925 including detached and semi-detached brick and frame dwellings. The lots surrounding the site vary in area and width.

6. The applicant proposes to construct a two-story plus basement brick and frame single family dwelling on the subject lot. The average width of the subject lot is 33.6 feet. The Zoning Regulations require a minimum width of fifty feet. The applicant is therefore seeking a variance from the lot width requirements of 16.4 feet or 32.8 percent.

The proposed development is in compliance with all other area requirements of the R-1-B District.

7. The architectural design of the proposed single family dwelling will generally be in keeping with the surrounding development. The first level will be brick and the second story will be wood. The gross floor area of the proposed dwelling will be approximately 3,096 square feet. The structure will have a wood deck at the rear, as well as two paved parking spaces accessible from the public alley.

8. The subject site is bounded by Upshur Street to the north, a 15 foot public alley to the east, a 15 foot public alley to the south, and a detached single family dwelling to the west.

9. The Office of Planning (OP), by memorandum dated June 13, 1988, recommended that the application be approved. OP was of the opinion that the applicant had met it's burden of proof and would suffer a practical difficulty if the requested relief was not granted in that the applicant would be limited in the future use of the property. The property is irregularly shaped and was subdivided prior to the adoption of the Zoning Regulations in 1958. The OP was further of the opinion that the proposed construction would not create any adverse impact on the surrounding area and would not be a detriment to the public good which would impair the intent, purpose and integrity of the R-1-B District. The Board concurs with OP's recommendation.

10. Advisory Neighborhood Commission (ANC) 4A, by its report received on June 14, 1988 and a representative at the public hearing, opposed the application based on the following:

- a. The proposal does not comply with the provisions of 11 DCMR 401.2 which would permit construction of a single family dwelling if the lot provided 80 percent of the required lot width.
- b. The utilization of a lot this narrow would impair the intent, purpose, and integrity of the Zoning Regulations.
- c. The proposed structure would be an "alley dwelling" which is not permitted on an alley less than thirty feet in width.
- d. The plat contained in the record does not accurately depict the siting of the proposed residence.

11. A representative of the Rock Creek East Neighborhood League and several nearby property owners testified at the public hearing in opposition to the application. The opposition was based on the following:

- a. The proposed dwelling would be built as a rental dwelling.
- b. The proposed improvement would be an alley dwelling.
- c. The immediate neighbors to the west would be deprived of privacy, sunlight and fresh air.
- d. Service vehicles, emergency vehicles and neighbors' automobiles would have difficulty in ingress and egress through the abutting alley by the southeast corner of the proposed dwelling.
- e. The front yard would be fenced-in contrary to other houses in the community.
- f. The applicant did not reach out to the community in an effort to inform them of his plans.
- g. The owners of the property immediately adjacent to the west boundary of the subject lot were not given an opportunity to purchase the lot.

12. Ward Four Councilperson Charlene Drew Jarvis submitted an opposition statement for the record at the hearing via a staff member. This opposition was based upon a view that the improvement would be inconsistent with the current design of the neighborhood which does not include housing fronting on alleys or which begin at the rear of an adjacent house. Further, the proposed construction would lower the property value of the adjacent dwelling.

13. In addressing the issues and concerns of the ANC and the opposition, the Board finds as follows:

- a. The provisions of 11 DCMR 401.2 are not applicable in this case. The applicant is properly seeking variance relief from the requirements of 11 DCMR 401.3.
- b. The proposed structure is not located on an alley lot and therefore, does not constitute an alley dwelling.
- c. The applicant proposes to reside at the subject premises. However, it is not within the Board's jurisdiction to prohibit the occupancy of the structure as a single family rental unit. The construction and occupancy of the proposed structure as a single family residence is consistent with the Zoning Regulations.
- d. The Board is persuaded that the design and location of the proposed residence on the site will result in negligible impacts on the privacy, light and air of the adjacent residence. The Board finds

that the distance between the proposed structure and the adjacent residence is consistent with the requirements of the Zoning Regulations.

- e. The plans provide for an angle in the fence at the southeast corner of the lot to facilitate maneuverability by motor vehicles in the alley system.
- f. The proposed fencing does not project into the 64 foot front yard provided by the applicant.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty upon the owner arising out of some exceptional or extraordinary condition of the property. The Board further must find that the relief can be granted without substantial detriment to the public good and that it will not impair the intent, purpose and integrity of the zone plan.


The Board concludes that the applicant has met the burden of proof. The subject lot is irregularly shaped and is bounded on three sides by public rights-of-way. The proposed residence complies with all the area requirements of the R-1-B District except for lot width. The width of the subject lot can not be increased because of the existing public alleys on the east and south, Upshur Street on the north, and an improved lot to the west, thus creating a practical difficulty upon the owner. There is no other practical use of the site if the application is denied. The applicant is unable to comply with the strict requirements of the Zoning Regulations.

Having afforded "great weight" to the ANC recommendation, the Board nevertheless concludes that the applicant has satisfied the requirements of Sub-section 3107.2. The applicant has shown that the exceptionally narrow lot makes its development very difficult and that the proposed development would not substantially impair the public good or the intent, purpose, or integrity of the zone plan. It is therefore ORDERED that the application is GRANTED.

VOTE: 4-1 (William F. McIntosh, Carrie L. Thornhill and Paula L. Jewell to grant; Elliott Carroll to grant by proxy; Charles R. Norris opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 3 1989

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14818order/LJP39

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14819 of George Johnson, as amended, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5) to establish a delicatessen and grocery store on the first floor in an R-4 District at premises 60 Rhode Island Avenue, N.E., (Square 3536, Lot 8).

HEARING DATES: June 22 and September 14, 1988
DECISION DATE: October 5, 1988

FINDINGS OF FACT:

1. The application was originally advertised as a special exception to change a nonconforming use from grocery store to a delicatessen and was scheduled for the public hearing of June 22, 1988. During the course of the testimony of the applicant, the Board was made aware that the application should more properly have been advertised as a variance from the use provisions of the R-4 District due to the discontinuance of the grocery store use for a period in excess of three years. The application was readvertised and scheduled for the public hearing of September 14, 1988.

2. The property is located at the northeast corner of the intersection of Rhode Island Avenue and Lincoln Road and is known as premises 60 Rhode Island Avenue, N.E. It is zoned R-4.

3. The property is triangular in shape with a frontage of thirty-four feet along Rhode Island Avenue and 56.54 feet along Lincoln Road.

4. The property is currently improved with a two-story plus basement brick structure which occupies nearly 100 percent of the site.

5. The existing building was constructed in approximately 1912. The second floor of the structure was used for residential purposes. The first floor of the structure was used for commercial purposes from the time of construction until the applicant purchased the property in 1975. The most recent Certificate of Occupancy issued for the property was No. B-90164, dated August 3, 1975, which permitted a retail grocery store on the first floor. The structure has been vacant since 1975.